



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

Order Instituting Rulemaking into the Review of the
California High Cost Fund B Program.

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**OPENING COMMENTS OF COX CALIFORNIA TELCOM, L.L.C.,
DBA COX COMMUNICATIONS ON ASSIGNED COMMISSIONER
RULING REGARDING THE SCOPING AND SCHEDULING OF
PHASE II ISSUES, DATED OCTOBER 5, 2007**

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I. Introduction and Background.

Pursuant to the Commission's Rules of Practice and Procedure ("Rules"), Cox California Telecom, L.L.C., *dba* Cox Communications (U-5684-C) ("Cox") submits these timely opening comments on issues set forth in the Assigned Commissioner Ruling Regarding the Scoping and Scheduling of Phase II Issues, dated October 15, 2007 ("AC Ruling").

The AC Ruling solicits comments on issues raised by not resolved in the Phase 1 decision. In Decision 07-09-020, the Commission significantly reformed the CHCF-B program by adopting a \$36 benchmark for purposes of identifying high-cost areas in the State. By utilizing this benchmark, the Commission significantly decreased the number of census block groups ("CBGs") deemed as high-cost areas which automatically reduced the number of consumers for which carriers could draw support from the CHCF-B. The Commission recognized, however, the difficulties in both taking the initial step to update the CHCF-B Program and ensuring that the on-going high-cost program reflect and be consistent with the competitive marketplace and the current regulatory framework.

The Commission concluded it would implement a reverse auction which would allow multiple carriers to submit bids and establish an "economically efficient level of subsidy."¹ Critical to any reverse auction is multiple entities actively participate in the bidding process. Whereas the level of competition in California did not previously support the Commission implementing a reverse auction, the Commission concluded in D.06-08-031 that the ILECs lack market power due to the competitive threat of both wireless and VoIP services.² Specifically, the Commission concluded that both wireless and VoIP services are substitutes for traditional wireline voice service offered by the ILECs. This finding strongly suggests that the Commission determine whether it is appropriate to allow these service providers to participate in the reverse auction. If they are not allowed or elect not to participate, Cox anticipates that there will be few

¹ Decision, p. 116.

² D.06-08-030, pp. 74-75. For example, the Commission concluded that "Similarly, VoIP service qualifies as another substitute voice service that may offer service with more features and functionalities at a given price point than traditional circuit-switched voice communications services." *Id.*, p. 75.

entities submitting bids to compete with those of the ILECs which would defeat the purpose of conducting the reverse auction.

The reverse auction is a promising mechanism in that the Commission can design it to facilitate competitive choice in high cost areas. A well-designed reverse auction will be technology-neutral such that multiple providers may bid and provide service to consumers in high-cost areas. As detailed below, Cox proposes that not only the winning bidder, but any entity submitting a bona fide bid for a given CBG be allowed to provide qualifying service and collect the same subsidy per line served as the lowest qualified bidder. Consumers in high-cost areas will benefit from this type of auction design in that they will potentially have a greater choice of providers.

In the Decision, the Commission deemed the reverse auction a superior solution over the cost proxy model for purposes of setting high-cost area support, but also suggested that there may still be a need for updated cost proxy models for a limited timeframe.³ Timely implementing the reverse auction by January 1, 2009, should eliminate the need to determine *whether* it is necessary to update the HM 5.3. Any attempt to update the HM 5.3 to model forward-looking technologies will be expensive, time-consuming and likely fall short of the more efficient method of a reverse auction. To explore and identify all of the benefits and potential drawbacks, Cox strongly recommends that the Commission investigate through workshops the best way to implement a reverse auction, including the scope, timing and rules.

While timely implementation is of primary importance, Cox recognizes that the Commission will need to address a large number of new and complex issues. By conducting workshops where interested parties can discuss and debate all relevant policy, economic, legal and operational issues, the Commission will gather the necessary information to adopt a well-designed and successful reverse auction model.

³ D.07-09-020, p. 11, 16.

II. The Commission Should Schedule Workshops So That It May Timely Implement The Reverse Auction.

Scope of Reverse Auction. The AC Ruling solicits comments on sequencing the implementation of a reverse auction and the updating of the cost proxy model, HM 5.3 and this necessarily involves consideration of numerous, complex and inter-related issues. At a minimum, the Commission will need to consider the following issues:

- by definition, a reverse auction requires multiple entities actively bidding on all or most CBGs;
- by providing for “blind” bidding the Commission may achieve efficient outcomes even if only one party bids to be the COLR for certain CBGs;
- the current definition of residential basic service limits eligibility for high-cost fund support to regulated wireline carriers;
- multiple CLECs have not participated in the high-cost program previously;
- the HM 5.3 is based on the ILECs’ wireline network and updating it would be time-consuming and resource-intensive while producing limited results;
- the current high-cost program is governed by Section 739.3⁴ which will expire on January 1, 2009;
- rules governing the reverse auction should be implemented on a technology- and competitively-neutral basis; and
- the Commission should adopt a different funding mechanism for any new high-cost program it adopts.

In considering these issues, the Commission cannot lose sight of the goal to adopt a reverse auction that is nondiscriminatory, technology-neutral and consistent with the competitive marketplace. While there may be a number of ways to design such an auction, Cox recommends that the Commission conduct a single simultaneous-closed bid auction. The Commission would

⁴ All section references are to the California Public Utilities Codes, unless otherwise noted.

identify one date by which all eligible bidders would submit written bids. Wireline and wireless carriers, and providers of qualifying interconnected voice over Internet Protocol (interconnected VoIP) service (“VoIP providers”),⁵ would be eligible to submit bids on those CBGs that exceed the \$36.00 benchmark adopted in the Decision.

Other than identifying the CBGs, the Commission should not pre-select or otherwise define service areas, but rather, allow each carrier to identify the CBGs it wishes to serve. Cox submits that it may be reasonable for an eligible bidder to bid on a single CBG or multiple CBGs, but that a bidder may submit only one bid for a given CBG. That being said, Cox recommends that the number of bids, whether a bidder may submit only one bid for a given CBG, whether bids for multiple CBGs must cover only contiguous CBGs, the format of bids and bid content should all be discussed in workshops.

Timely Implementation Of The Reverse Auction. Cox recommends that the Commission conduct workshops during the first part of 2008 so that the Commission may timely implement the reverse auction by January 1, 2009. That date is important for two reasons. First, Section 739.3 expires on January 1, 2009 and it is imperative that the Commission implement rules for the on-going high-cost program before Section 739.3 expires. This will ensure that consumers in high-cost areas continue to be served and on-going support is available to carriers serving those consumers.

Second, by implementing the reverse auction by January 1, 2009, the Commission and parties will not be forced to expend resources updating cost models during the next year to obtain data that the Commission should never have to utilize. The Commission already determined that it will use the “existing formula” to calculate high-cost support while rate caps on basic service are in place,⁶ and further, that it will not phase-out such rate caps prior to January 1, 2009.

⁵ The FCC defined Interconnected VoIP service providers in FCC 07-017. Interconnected VoIP service providers are required to comply with FCC rules concerning E-911 and CALEA. In addition, they may obtain and assign telephone numbers directly to their customers.

⁶ Decision, p. 52.

Accordingly, there is no need to consider updating the HM 5.3 for purposes of calculating high-cost subsidy support amounts within the next year or until the rate caps are phased out. By implementing the reverse auction in conjunction with the phase-out of rate caps will eliminate the need to rely on the HM 5.3 on a going-forward basis.

Multiple Entities Should Be Eligible to Serve and Receive Cost Support. Cox anticipates that upon receipt of all bids, Staff will tabulate the bids and select the lowest bid for purposes of setting the cost-support benchmark for the CBGs covered by such bid (“Designated Cost Benchmark” or “DCB”). Cox also anticipates that the winning bidder will be required to serve as the COLR for such CBGs for a fixed term. A winning bidder will likely require a fixed period of time to implement business models underlying its winning bid. For example, a carrier may submit a bid based on the carrier building out its network and that in turn could be dependent, in part, on receiving high-cost fund support. A five-year term would be reasonable, but Cox submits that parties may be able to demonstrate that a longer or shorter term is more appropriate.

In addition to providing the winning bidder certainty, a fixed term would also prove useful as a trigger for re-convening another auction round. For example, prior to the end of the fixed term, new entrants or any other eligible provider that did not participate in the previous auction round could request that the Commission conduct another auction round. The Commission will need to establish rules governing when carriers may request another auction round and the timing of subsequent auctions to ensure that consumers will be served and carriers will receive support for the services provided. Again, interested parties should have the opportunity to discuss issues related to a fixed term and triggers for subsequent auction rounds at workshops.

To facilitate competition in high-cost areas, the Commission could allow any eligible entity that submitted a qualifying bid (which was not the lowest bid) for a given CBG to voluntarily serve as a COLR for such CBGs and recover a subsidy based on the Designated Cost

Benchmark.⁷ This type of rule extends the benefits of competition, is consistent with URF and the Commission's efforts to regulate all carriers in a uniform matter without adversely impacting competition or increasing the total subsidy requirement collected from ratepayers. In fact, this design feature ensures that any entity deemed eligible to receive high-cost area support can participate on a level playing field.

No Additional Service Quality Standards, Financial Conditions, Reporting Obligations Or Eligibility Requirements Should Be Imposed On Carriers. Additional or different service quality standards than existing rules that apply to telecommunications carriers should not be imposed on carriers serving as COLRs.⁸ Carriers designated and serving as COLRs today are not required to adhere to different or additional requirements service quality requirements. Similarly, the Commission should not require carriers wishing to serve as COLRs to adhere to any additional financial, compliance or reporting requirements.

The Commission grants CPCNs to wireline carriers and the Federal Communications Commission authorizes wireless carriers to provide service. The Commission and the FCC have already determined that these carriers have the requisite financial assets and technical and operational knowledge to serve as a public utility. They are qualified to serve all consumers—including those in high-cost areas. Nothing in the on-going high-cost program suggests that additional requirements are necessary. If interconnected VoIP service providers will participate in the reverse auction, then the Commission will need to consider whether it is appropriate to require them to voluntarily adhere to standards applicable to regulated carriers or different standards. Replacing the existing CHCF-B program with a reverse auction does not change the fact that certificated carriers are qualified to provide service to high-cost areas.

⁷ The Commission should not require those carriers that are not the winning bidder but who voluntarily obtain COLR status, to provide service for a fixed period of time. A fixed-term would likely dissuade such carriers from voluntarily serving the given high-cost area. Without a fixed term, a carrier is more likely to enter the market on a trial basis to determine if it can compete with the winning bidder.

⁸ Cox understand that service quality issues are pending in R.02-12-004 Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B.

Residential Voice Service Only. In D.96-10-066, the Commission interpreted Section 739.3 to limit high-cost fund support to basic service provided by telephone corporations. After January 1, 2009, however, Section 739.3 will expire and the Commission will not be bound to the rules it adopted when implementing Section 739.3. Nonetheless, Cox recommends that the Commission limit the high-cost area subsidy to support COLRs providing basic voice service or the equivalent service for non-regulated entities to residential consumers. The Commission has determined previously not to expand universal service support to broadband services.⁹ And if the Commission were to expand the definition of basic service to include broadband services, it should do so in a general proceeding, such as R.06-05-028. This would ensure that all interested parties have an opportunity to comment and that the Commission develops a complete and accurate record. While support should be limited to basic service, a COLR, of course would offer and provide additional services to consumers in high-cost areas.

Cox proposes that interested parties should also discuss at workshops COLRs providing bundles to consumers in high-cost areas. Consumers that purchase a bundled offering that includes basic service should receive the benefit of the high-cost program subsidy, meaning that they should receive an affordable price for basic service. It follows that carriers offering such bundles should be eligible to collect the appropriate subsidy for the provision of basic service provided to such consumers.

Funding Mechanism. In designing the reverse auction, the Commission should also take the time to consider the appropriate subsidy funding mechanism for the on-going high-cost program. As stated in comments filed in R.06-05-028, Cox supports AT&T's proposal to implement a surcharge system based on the assignment of working numbers. This proposal includes numerous benefits which Cox detailed in its comments. Summarily, this funding mechanism is technology-neutral, can be both implemented and modified over time in a fairly

⁹ See D.96-10-066 and D.02-01-060.

simple manner and would be much less confusing to consumers as there would be a single surcharge instead of the multiple surcharges carriers impose today.

III. Conclusion.

Cox appreciates the efforts of the Commission in implementing a reverse auction for determining high-cost area support. As the list of questions in the AC Ruling indicates, the Commission will need to resolve numerous and complex issues concerning design, implementation and operation of a reverse auction

Consistent with the current CHCF-B program and a competitive marketplace, Cox submits that the Commission should design and adopt a reverse auction that permits multiple carriers to serve as COLRs in high-cost areas. Timely implementing the reverse auction is integral to the Commission completing its successful reform of the high-cost program and making it consistent with the competitive marketplace. And to successfully implement a non-discriminatory, technology-neutral high-cost area program, Cox recommends that the Commission address in workshops all issues raised in comments filed in response to the AC Ruling.

Dated: November 9, 2007

Respectfully submitted,

/s/

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PROOF OF SERVICE

I, Margaret L Tobias, the undersigned, hereby declare that, on November 9, 2007, caused
a copy of the foregoing:

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RULING REGARDING THE SCOPING AND SCHEDULING OF
PHASE II ISSUES, DATED OCTOBER 5, 2007**

in the above-captioned proceeding, to be served as follows:

- ☒ [X] Via email and US Mail to the Assigned Commissioner's Advisor
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Dated: November 9, 2007 at San Francisco, California.

/s/

Margaret L. Tobias

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